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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

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ALLISTER D. GUERRA, §  
§  
Petitioner, §  
§  
versus § CIVIL ACTION NO. 1:10-CV-285  
§  
JODY R. UPTON, §  
§  
Respondent. §

**MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND  
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Petitioner Allister D. Guerra, a prisoner confined at the Federal Correctional Institution in Beaumont, Texas, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court ordered that this matter be referred to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the petition.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit. Petitioner may not pursue habeas relief under Section 2241 because his claims do not meet the requirements set forth in *Reyes-Requena v. United States*, 243

F.3d 893, 904 (5th Cir. 2001). Petitioner claims that he was convicted of a non-existent offense in light of *Bailey v. United States*, 516 U.S. 137 (1995). This claim fails the second prong of the *Reyes-Querena* test because *Bailey* was decided before petitioner's trial.

**ORDER**

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 21st day of June, 2010.

  

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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE